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H.C.P.No.644 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P.No.644 of 2023

Nithya

.. Petitioner /
Wife of the detenu

VS

1. The Secretary to Government
Ministry of Consumer Affairs
Food and Public Distribution
(Department of Consumer Affairs)
No.270, 'Krisjhi Bhavan'
New Delhi – 110 001
- 2.The Principal Secretary to Government
Food and Consumer Protection Department
2nd Floor, Namakkal Kavignar Maaligai
Secretariat, Chennai – 600 009
3. The District Magistrate and
District Collector, Tiruvallur District
Tiruvallur
4. The Superintendent of Police
Thiruvallur
5. The Superintendent of Prison
Central Prison II, Puzhal, Chennai



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6. The Inspector of Police

Civil Supplies Criminal Investigation Department

Tiruvallur

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 29.03.2023 in PBMMSECA.No.01/2023 against the petitioner's husband Kumar, male aged 38 years, son of Rathinam, who is confined at Central Prison-II, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.R.Sasikumar
for Mr.S.Senthilvel

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity] was listed in the Admission Board on 20.04.2023, this Court made the following order:

'Captioned Habeas Corpus Petition has been filed in this Court on 12.04.2023 inter alia assailing a detention order dated 29.03.2023 bearing reference PBMMSECA No.01/2023 made by 'third respondent' [hereinafter 'Detaining Authority' for the sake of convenience and clarity]. To be noted, sixth respondent is the Sponsoring Authority.



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2. *Wife of the detenu is the petitioner.*

3. *Learned counsel for petitioner submits that ground case qua the detenu is for alleged offences under Sections 6(4) of TNSC (RDCS) Order 1982 read with 7(1)(a)(ii) of Essential Commodities Act, 1955 in Crime No.61 of 2023 on the file of Civil Supplies CID Unit, Tiruvallur.*

4. *The aforementioned detention order has been made on the premise that the detenu is a 'Black Marketeer' vide 'Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980)' [hereinafter 'Black Marketing and EC Act' for the sake of convenience and clarity].*

5. *The detention order has been assailed inter alia on the ground that some of the pages in the grounds booklet furnished to the detenu are only in English which prevented the detenu from making an effective representation.*

6. *Prima facie case made out for admission. Admit. Issue Rule nisi returnable by four weeks.*

7. *Mr.R.Muniyapparaj, learned Additional Public Prosecutor, State of Tamil Nadu accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.'*

2. The aforementioned order made in the 20.04.2023 Admission listing shall be read as an integral part and parcel of this order which means that the short forms, short references and abbreviations used in the order in the Admission listing shall be used in the instant order also.



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3. There are two adverse cases and one ground case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.61 of 2023 on the file of Civil Supplies CID, Tiruvallur for alleged offences under Sections 6(4) of T.N.S.C (RDCS) order 1982 read with Section 7(1)(a)(ii) of Essential Commodities Act, 1955. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

4. Mr.R.Sasikumar learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

5. As would be evident from the Admission Board order dated 20.04.2023 (more particularly paragraph 5 thereat), at the time of admission i.e., in the Admission Board, the point that some of the pages in the grounds booklet furnished to the detenu were only in English which prevented the detenu from making an effective representation was raised. Elaborating on the aforementioned point, learned counsel for petitioner drew our attention to page 77 of the grounds booklet and submitted that a portion of the Regional Laboratory Report which is in English has not been translated.



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6. We had the benefit of perusing the booklet. We also noticed that Regional Laboratory Report, forms part of the grounds on which the impugned detention order has been made. As this turns on obtaining scenario which comes to light from the booklet which is before us, learned State Additional Public Prosecutor does not have much of a say.

7. Be that as it may, we are informed that the the detenu is unlettered. We are also informed that the detenu is conversant only with Tamil. Relevant portion of the confession is in Page No.64 of the grounds booklet and the same reads as follows:

'....நான் படிக்கவில்லை....'

8. We remind ourselves of Powanammal case i.e., ***Powanammal Vs. State of Tamil Nadu***, wherein Hon'ble Supreme Court addressed itself to this translation point in a similar fact situation. The question which the Hon'ble Supreme Court addressed itself to is captured in paragraph 6 and the manner in which a Hon'ble Bench of the Supreme Court answered this question is captured in paragraph 16. To be noted, ***Powanammal*** case is reported in **(1999) 2 SCC 413** and paragraphs 6 and 16 {as in SCC journal} read as follows:



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'6. The short question that falls for our consideration is whether failure to supply the Tamil version of the order of remand passed in English, a language not known to the detenue, would vitiate her further detention.

16. For the above reasons, in our view, the non-supply of the Tamil version of the English document, on the facts and in the circumstances, renders her continued detention illegal. We, therefore, direct that the detenue be set free forthwith unless she is required to be detained in any other case. The appeal is accordingly allowed. '

9. In the case on hand, we find that Regional Laboratory Report which has been relied on as part of the grounds of detention qua impugned preventive detention order is a crucial document and not furnishing of a portion of translation of the same in Tamil, the lone language known to the detenu has impaired his constitutional right to make an effective representation qua the impugned detention order. We therefore have no hesitation in saying that the impugned detention order deserves to be dislodged.

10. Apropos, the sequitur is, captioned HCP is allowed. Impugned detention order dated 29.03.2023 bearing reference PBMMSECA.No.01/2023 made by the second respondent is set aside and



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the detenu Thiru.Kumar, aged 38 years, son of Thiru.Rathinam, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
31.07.2023

Index : Yes

Neutral Citation : Yes

GPA

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison II, Puzhal



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To

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High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**
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